

# ANALYSIS OF ORIGINAL BILL

## Franchise Tax Board

Author: Alarcon Analyst: Colin Stevens Bill Number: SB 1182

Related Bills: none Telephone: 845-3036 Introduced Date: 2/26/99

Attorney: Doug Bramhall Sponsor: \_\_\_\_\_

**SUBJECT:** Employer Hepatitis A Immunization Credit

### SUMMARY

Under the Personal Income Tax Law (PITL) and the Bank and Corporation Tax Law (B&CTL), this bill would allow a credit equal to the costs paid or incurred by a taxpayer, who operates a food establishment, as defined, to immunize the taxpayer's employees for hepatitis A.

### EFFECTIVE DATE

This bill would be effective January 1, 1999, but apply to taxable or income years beginning on or after January 1, 2000, and before January 1, 2005.

### SPECIFIC FINDINGS

**Existing federal and state laws** provide various tax credits that are designed to provide tax relief for taxpayers who incur certain expenses or to influence behavior, including business practices and decisions (e.g., research credits, enterprise zone or program area hiring credits). These credits provide incentives for businesses to perform actions which they may not otherwise do, may not do at the desired location, etc. In addition to these special tax incentives, existing state and federal laws allow a deduction for business expenses, including employee salaries. Employer contributions to medical plans for their employees also are typically deductible for the employer and excluded from income by the employees.

**Neither federal nor state laws** allow a tax credit for the cost of immunizing workers. However, to the extent immunizations of employees would be considered an ordinary and necessary business expense, those costs would be deductible in the year the costs were paid or incurred.

**Under the PITL and B&CTL, this bill** would allow as a credit equal to 100% of the amount paid or incurred during the taxable or income year by a taxpayer, as defined, for hepatitis A immunizations for the taxpayer's employees who are residents of this state.

For purposes of **this bill**, a "taxpayer" would be limited to a person or entity engaged in a trade or business of operating a food establishment, as described under Section 113780 of the Health and Safety Code (H&SC).

Under H&SC Section 113780, a "food establishment" means any room, building, or place, or portion thereof, maintained, used, or operated for the purpose of storing, preparing, serving, manufacturing, packaging, transporting, salvaging, or otherwise handling food at the retail level.

### Board Position:

_____ S	_____ NA	_____ NP
_____ SA	_____ O	_____ NAR
_____ N	_____ OUA	_____ <u>X</u> PENDING

### Department Director

### Date

**Gerald Goldberg**

**2/26/1999**

"Food establishment" does not include a commercial food processing establishment as defined in Section 111955 of H&SC, at the wholesale level, a mobile food facility, vending machine, satellite food distribution facility, temporary food facility, open-air barbecue, certified farmers' market, stationary mobile food preparation unit, or mobile food preparation unit.

The credit allowed would be in addition to any federal or state tax deductions otherwise allowable.

Any credit that exceeds the tax liability in the year allowed could be carried over until exhausted.

Since **this bill** does not specify otherwise, the existing state law which provides general rules which apply to the division of credits when multiple taxpayers, share in the costs, would apply. Also, this credit would not be allowed to reduce regular tax below the tentative minimum tax for purposes of the alternative minimum tax (AMT) calculation.

#### Policy Considerations

This bill would allow a taxpayer to claim both this credit equal to 100% of costs as well as the state and federal deduction for the same expense, thereby creating the opportunity for a taxpayer to receive more than 100% of the costs paid for immunizations. However, disallowing or reducing the deduction by the amount of the credit would create an adjustment and complicate the preparation of the state income tax return.

This bill would allow a credit equal to 100% of identified costs. As a matter of state tax policy, a credit equal to 100% of costs is unprecedented.

It may be more efficient to directly fund a hepatitis A immunization program than to utilize the state tax system to indirectly fund the program.

The credit would be limited to those immunizations provided to those employees who are California residents. A more practical approach may be to limit the credit to employees working in California, or to limit the credit to employees working at food establishments located in California so that the taxpayer does not have to verify the employees' residency.

This bill would allow a credit for the immunization of workers at certain types of food establishments, but would not provide the credit for taxpayers whose workers work at other types of food establishments, creating disparate treatment for taxpayers. If the author's intent is to reduce hepatitis in all areas of food processing, he may wish to consider other types of food services for this credit.

#### Implementation Considerations

In recent credits, the Legislature has limited the number of years the unused credit may be carried forward since most credits are exhausted in eight years.

This bill permits an unlimited carryover period for any unused credit. This would require the department to include the credit on tax forms long after its repeal date.

This bill does not require that a taxpayer maintain records of employee immunizations in order to be eligible to claim the credit. A requirement that employers retain a record of employee immunizations would help to ensure that disputes do not arise between taxpayers and the department.

#### Technical Considerations

The language in this bill allowing credits to be carried forward after the repeal date is unnecessary as Revenue and Taxation Code Sections 17039 and 23036 already allow credits to be carried forward after repeal. Amendments 1 and 2 would remove the unnecessary language.

#### FISCAL IMPACT

##### Departmental Costs

If the implementation concerns are addressed, this bill is not expected to result in significant costs to the department.

##### Tax Revenue Estimate

This estimate should be considered a rule of thumb that 5% of the qualifying individuals would qualify the employer for the tax credit in any given year.

Fiscal Year Cash Flow Effective 1/1/00 Enactment Assumed June 30, 1999 \$ Millions		
2000-01	2001-02	2002-03
(\$10)	(\$10)	(\$11)

This analysis does not consider the possible changes in employment, personal income, or gross state product that could result from this measure.

##### Tax Revenue Discussion

The revenue impact for this provision would be determined by the number of individuals receiving hepatitis A immunizations, the cost of those immunizations and the average amount of credit applied against available tax liabilities for employers.

This revenue estimate takes into account that employers are not legally required to have their employees immunized for Hepatitis A.

This estimate was developed in the following steps. First, according to the Employment Development Department (EDD), approximately 846,000 employees working in food establishments for 1998 would have qualified for credit under this bill. This number was grown 5% per year to yield approximately 945,000 qualifying individuals for tax year 2000.

It was projected that, due to the tax incentive of this proposal, approximately 5% of these qualifying individuals in any given year would qualify the employer for the tax credit, resulting in approximately 47,000 individuals for the year 2000. Second, according to the Department of Health Services, the average cost for hepatitis A immunization is \$210. Third, by multiplying the number of qualifying individuals by the average cost, it is projected that the amount of credits generated would be approximately \$10 million for tax year 2000. It was assumed that all of the credits would be applied in the year generated.

BOARD POSITION

Pending.

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FRANCHISE TAX BOARD'S  
PROPOSED AMENDMENTS TO SB 1182  
As Introduced February 26, 1999

AMENDMENT 1

On page 2, strike lines 19-20.

AMENDMENT 2

On page 3, strike lines 1-2.